APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 81-3114

FALLON W. BENTZ, Acting Regional Director of the Fifteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Plaintiff-Appellee,

versus

GENERAL LONGSHORE WORKERS, ILA LOCAL NO. 1418 and GENERAL LONGSHORE WORKERS, ILA LOCAL NO. 1419,

Defendants-Appellants,

versus

GREAT SOUTHERN, *et al.*,

Intervenors-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

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(March 29, 1982)

Before GOLDBERG, WILLIAMS and GARWOOD, Circuit Judges.

PER CURIAM:

AFFIRMED. See Local Rule 21.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 75-3223

Section "H"

FALLON W. BENTZ, Acting Regional Director of the Fifteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD

versus

GENERAL LONGSHORE WORKERS, ILA LOCAL No. 1418 and GENERAL LONGSHORE WORKERS, ILA LOCAL No. 1419

JUDGMENT

Considering the Reasons for Judgment issued this day and the compromise made with respect to attorneys' fees, it is Ordered, Adjudged, and Decreed that:

The Interlocutory Order Regarding Attorney Fees issued herein by this Court, dated and entered June 26, 1980, is hereby recalled and annulled.

The Clerk of Court is hereby directed not to disburse the funds in the Court's registry in this matter until all rights of appeal of this Judgment have expired or been exhausted, and all costs of Court and attorneys' fees have been taxed.

After the entry of this Judgment and the expiration of all delays for appeal or the final deposition of any appeal herefrom, then, following the next maturity date thereafter of the United States Treasury Bills in which the majority of the registry funds in this matter are invested, the Clerk of Court shall disburse the registry funds in the following manner and order:

1. From the interest portion of the said registry funds, the sum of $1,550.00 shall be deducted and paid, pursuant to this Court's order entered March 25, 1980, as follows:

(a) to Central Gulf Lines, Inc.	$516.67
(b) To Great Southern Paper Company and	516.67
(c) to International Navigation, Ltd.	516.66

to reimburse them for fees advanced to Arthur Anderson & Co. for financial evaluation of the NOSSA-ILA Escrow Account records;

2. From the interest portion of the said registry funds, the sum of $51.25 shall be deducted and paid to New Orleans Steamship Association as reimbursement for costs advanced for advertising a notice of the right to file claims herein in the Panama City, Florida *News-Herald* on June 20, 24, 27, and 28, 1979, as ordered by United States Magistrate James D. Carriere by order entered June 12, 1979;

3. The entire principal amount of the registry funds, and all interest earned thereon prior to deposit in the registry of the Court, shall be disbursed in accordance with and to the persons listed in Schedule I, II, and III of the Findings of Fact referred to in the said Reasons for Judgment;

4. The balance of the registry funds (*i.e.*, the remainder of the interest earned while in the Court's registry after deduction of the disbursements provided in paragraphs 1 and 2 hereinabove) shall be disbursed to the persons listed in Schedule IV of the above-referred-to Findings of Fact, in the proportions set forth in said Schedule IV;

provided that the disbursements ordered in paragraph 4 above may be modified pursuant to the Consent Judgment on Attorneys' Fees to be entered herein or, in the absence of such consent judgment, if the conditions to concurrence by the parties with the Consent Judgment are not met, the Court will then determine the amount and sources of attorneys' fees and costs to be awarded, and the disbursements ordered in paragraphs 3 and 4 above may be modified pursuant to such determination.

New Orleans, Louisiana, this 20th day of January, 1981.

/s/ A. G. Duplantier
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 75-3223

Section "H"

FALLON W. BENTZ, Acting Regional Director of the Fifteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD

versus

GENERAL LONGSHORE WORKERS, ILA LOCAL No. 1418 and GENERAL LONGSHORE WORKERS, ILA LOCAL No. 1419

REASONS FOR JUDGMENT

This matter originated as an injunction proceeding brought by the Regional Director of the National Labor Relations Board ("NLRB") under Sec. 10(*l*) of the National Labor Relations Act, as amended, 29 USC 160(1), to enjoin the collection of a royalty that was alleged to be unlawful. As is fully explained in this Court's Reasons for Judgment and Order signed April 5, 1979 and entered April 6, 1979 (which Reasons for Judgment and Order are incorporated herein by reference), the injunction proceedings eventually resulted in the deposit into the registry of the court, pending resolution by the NLRB of the question of legality of the royalty, of $1,095,119.82 of principal, plus interest accumulated both prior to and after deposit in the registry (hereinafter these monies shall be referred to as the "registry funds"). The NLRB eventually found the royalty to be unlawful. Proceedings were then renewed before this Court by various parties, intervenors, and claimants for attorneys' fees with respect to distribution of the registry funds.

After considering the oral arguments made in a conference by the Court with counsel for all parties and claimants for attorneys fees and intervenors, and all the various memoranda filed, this Court's said April 5, 1979 Order provided that the registry funds plus interest earned thereon would be paid to those persons who incurred the expense of the unlawful royalty, and referred this matter to United States Magistrate James D. Carriere to serve as a Special Master to determine who incurred this expense and the amount thereof as to each person, and reserved the attorneys' fees question in the event the parties were unable to resolve the same amicably.

By Special Master Finding and Recommendation signed March 27, 1980 and entered March 28, 1980, Magistrate Carriere made certain Findings of Fact and a Recommendation for Judgment. Timely objections and a motion for review were filed by two of the claimants for attorneys' fees. After full briefing and a status conference with counsel for all parties and claimants, the issues raised in the objections and motion for review and the awardability of attorneys' fees were determined by an interlocutory Order Regarding Attorney Fees signed and entered June 26, 1980.

Said Order Regarding Attorney Fees left for further determination the amount of any award of attorneys' fees to be made by the claimants thereof, Alley and Alley, Chartered, Sale, Bryant, Thompson & Kurvin, Chartered, and Panama City Port Authority (hereinafter, "the attorneys' fees claimants"). Several parties to this litigation, namely Great Southern Paper Company ("Great Southern"), Pioneer Shipping and Forwarding Company, Limited ("Pioneer"), International Navigation, Ltd. ("INL"), and Central Gulf Lines, Inc. ("Central Gulf") have made a compromise agreement with the attorneys' fees claimants, by means of which the amount of fees and out-of-pocket costs of the said attorneys'

fees claimants is fixed and the sources of payment of said fees and costs are agreed to. Said compromise agreement is conditioned upon several contingencies, the most important of which is the finality of the Judgment to be entered in accordance herewith. A copy of the compromise agreement is attached hereto as Exhibit A. If all of the conditions are met, the parties to the compromise agreement will submit for entry by the Court a Consent Judgment on Attorneys' Fees in the form of Exhibit B hereto. The court has reviewed and approved the same. Accordingly, the interlocutory Order Regarding Attorney Fees issued herein by this Court, dated and entered June 26, 1980, will be recalled and annulled. Because the parties in their compromise agreement have provided conditions to their concurrence with the Consent Judgment on Attorneys' Fees, which conditions relate to disposition of this matter including any appeal from the Judgment entered herewith, the Judgment entered this date will make no disposition with respect to the amount and source of attorneys' fees. If the conditions to concurrence with the Consent Judgment are not met and the Compromise Agreement is revoked, this Court will then fix the amount and sources of attorneys fees and costs.

The Court directs entry of a final judgment as to all of the claims herein except the the attorneys' fees claim, the Court determines that there is not just reason for delay and that the circumstances certainly justify the entrance of such a judgment (Rule 54(b)).

No objections having been made to the Magistrate's Findings of Fact Nos. 1 through 7, inclusive, the Court adopts said Findings of Fact with the exception that, in Finding of Fact No. 6, Schedule III, the figure "100.99%", a clerical error, is corrected to read "100.00"; it is also noted that, as a result of rounding off, the percentages shown in both the Finding of Fact No. 6, Schedule II and Finding of Fact No. 6, Schedule III actually total

100.01%; however, the monetary figures balance in both of said schedules.

Judgment will be entered accordingly.

/s/ A. G. Duplantier
United States District Judge

Entered: January 20, 1981

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action Number 75-3223

Section "H" (2)

FALLON W. BENTZ, ETC.

versus

GENERAL LONGSHORE WORKERS,
ILA LOCAL NO. 1418, *et al.*

SPECIAL MASTER FINDING AND RECOMMENDATION

Pursuant to the Order of Reference of the Honorable Adrian Duplantier, United States District Judge, this case was tried before the Honorable James D. Carriere, United States Magistrate, acting as a Special Master. Based on the evidence adduced at trial, there follows Findings of Fact and a Recommendation for Judgment.

STATEMENT OF THE CASE

This Civil Action was referred to this Magistrate to determine the entities which "incurred the expense of the unlawful royalty, the amount thereof, [and] the amount thereof as to each such person."

FINDINGS OF FACT

1. Written notice of the pendency of these proceedings and the necessity to file a claim against the funds in the registry of Court was given to the Panama City Port Authority and to the Southern Steamship Agency, Inc., Panama City, Florida. Published notice was given in the Panama City News Herald during the last two weeks of June, 1979. The deadline for filing such claims was October 1, 1979.

2. An audit was made by Arthur Andersen & Co. of the amounts paid into the New Orleans Steamship Association GAI Escrow Account and NOSSA-Royalty Escrow Account relating to loadings at Panama City, Florida and subsequently handled in the Port of New Orleans for the period from October 1, 1974 through May 31, 1978. The registry ledger of this Court was likewise audited and compared to the aforesaid accounts. Exhibit I.

3. This Court finds that $1,109,704.10 was paid into the registry of this Court. Of this, $6,533.44 represents interest earned by funds while in the hands of the New Orleans Steamship Association (NOSSA) prior to the payment of the funds into the Court's registry, $8,050.84 represents interest earned by funds while in the hands of the NOSSA-ILA Royalty Escrow Account (Escrow Account) prior to the payment of the funds into the Court's registry, and the balance, $1,095,119.82, represents principal paid in.

4. The principal paid in is attributable and should be disbursed to the claimants as follows.

SCHEDULE 1

NOSSA	$ 22,397.94*
Escrow Account	22,397.94*
Lykes Bros. Steamship Co., Inc. (Lykes)	81,156.00
Central Gulf Lines, Inc. (Central Gulf)	247,243.06
Combi Line (Combi)	78,233.40
Waterman Steamship Corporation (Waterman)	4,935.30
Pioneer Shipping and Forwarding Company, Limited (Pioneer)	79,516.00
Great Southern Paper Company (Great Southern)	226,510.00
International Navigation, Ltd. (I.N.L.)	332,730.16
TOTAL	$1,095,119.80**

* The sums claimed by NOSSA and the Escrow Account represent monies paid into the Court's registry in error.

** A two cent ($.02) differential cannot be accounted for.

5. The $6,533.44 of interest paid in to the Court's registry by NOSSA should be prorated and distributed to those who paid in the monies as follows.

SCHEDULE II

Lykes	7.73%	$ 464.17
Central Gulf	23.54	1,413.48
Combi	7.45	447.26
Waterman	0.47	28.21
Pioneer	7.57	454.56
Great Southern	21.57	1,294.99
I.N.L.	31.68	1,902.27
	100.00%	$6,004.94
NOSSA	——	$ 529.50
Escrow Account	——	-0-
TOTAL		$6,533.44

6. The $8,050.84 of interest paid in to the Court's registry by the Escrow Account should be prorated and distributed to those who paid in the monies, as follows.

SCHEDULE III

Lykes	7.73%	$ 567.53
Central Gulf	23.54	1,728.20
Combi	7.45	547.02
Waterman	0.47	34.51
Pioneer	7.57	555.79
Great Southern	21.57	1,583.59
I.N.L.	31.68	2,325.85
	100.99%	$7,342.49
NOSSA	——	-0-
Escrow Account	——	$ 708.35
TOTAL		$8,050.84

7. All interest earned by the funds while on deposit in the registry of the Court and until such time as the funds are disbursed to the claimants should be prorated among and disbursed to those who bore the expense of the monies paid in, dividing their respective portions to the principal, as shown by Schedule 1 above, by $1,095,120.00

(the total principal, rounded to the nearest dollar), as follows.

SCHEDULE IV

NOSSA	2.05%
Escrow Account	2.05
Lykes	7.41
Central Gulf	22.58
Combi	7.14
Waterman	0.45
Pioneer	7.26
Great Southern	20.68
I.N.I.	30.38
TOTAL	100.00%

8. The parties hereto all agree to the correctness of the foregoing Schedules, but also recognize and agree that the amount to be distributed to the respective claimants are subject to the Court's decision regarding the remaining legal issues, including, without limitation, such reductions to claims, if any, as the Court may decree in order to provide for reimbursement of costs advanced to the persons so advancing costs and for such costs and attorney's fees, if any, as the Court may award to Alley and Alley, Chartered, to Sale, Bryant, Thompson and Kurvin, Chartered, and/or to Panama City Port Authority.

RECOMMENDATION

It is recommended that the Court adopt the Schedule of Distribution contained herein after a determination of the remaining legal issues in this litigation.

New Orleans, Louisiana, March 27, 1980.

/s/ _____

JAMES D. CARRIERE
United States Magistrate

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 75-3223

Section "H"

FALLON W. BENTZ, ETC.

vs.

GENERAL LONGSHORE WORKERS,
ILA LOCAL NO. 1418, *et al.*

REASONS FOR JUDGMENT

This proceeding was instituted by the Regional Director of the NLRB under the authority of Title 29, United States Code, Section 160(1) seeking injunctive relief against an alleged unfair labor practice. The particular practice complained of was a provision in a collective bargaining agreement between ILA Locals 1418 and 1419 (Unions) and New Orleans Steamship Association (NOSSA). That provision, referred to as the "lighter royalty provision," is as follows:

> "(1) Lighter Royalty
>
> 1. On LASH and/or SEABEE lighters into or from which cargo has been loaded or discharged in United States ports by other than ILA labor and after which said lighters are loaded or discharged to or from the LASH system ship and/or SEABEE type ship by ILA longshore labor within the Port Limits herein defined, the employer shall pay to the Administrator of the NOSSA-ILA Pension, Welfare, Vacation and Holiday Funds the sum of One Dollar ($1.00) per long ton of cargo which was loaded or

discharged into or out of said lighters by non-ILA labor, subject to the following conditions:

a. No royalty payments shall be made on any such cargo if it was rehandled by ILA longshore labor at the request of the employer before putting it aboard ship;

b. No royalty payments shall be paid on any lighters that have been loaded with cargo not subject to load or count, such as dry bulk fertilizers, grain, bulk lube oil, bulk chemicals, et cetera.

Any such royalty monies actually paid to the Administrator of said Funds on or after the effective date of this contract (whether or not previously accrued) shall be divided as provided in accord with the Article hereof entitled "Royalties".

2. For each dollar paid by the employer to the NOSSA-ILA Pension Fund in accord with Section (1) above, the employer shall pay an equal amount to the Association for deposit in a "Guaranteed Annual Income" Escrow Account which shall be used by the Association in accord with and solely for the purposes set out in Section 12 of Article XXVIII-Guaranteed Annual Income."

On March 15, 1976, Judge West enjoined the enforcement of this provision as applied to ships emanating from the port of Panama City, Florida which pass through the port of New Orleans. In addition, Judge West ordered the parties to submit an order providing a method to keep account of the tonnage of LASH and SEABEE barge traffic emanating from Panama City and passing through New Orleans, so that payments due under the disputed agreement could be computed in the event that the agreement was ultimately determined to be lawful.

In response, the NLRB submitted a proposed order. Both the unions and NOSSA objected to this procedure and argued instead that rather than enjoin the enforcement of the royalty provision, the court should order the payments deposited in the registry of the court. NOSSA's motion filed April 23, 1976, included the following argument:

> Conversely, the continuance of royalty payments during the pendency of this litigation, conditioned upon an escrow of the royalty sums in the Registry of Court or as otherwise directed by this Court, would result in no injury to the charging parties since the sums of money paid monthly would all be available to those charging parties at the end of this litigation should the result be favorable to the NLRB.

The Unions put forth the same argument in different language in their supporting memorandum:

> In order to protect the interest of the employees for whose benefit the royalty is collected, it is necessary to put the money royalty on the side. In the event the Unions prevail the money would be immediately available for distribution in accordance with the Collective Bargaining Agreement. If the Unions do not prevail, the money can be returned with interest to those who have paid it. Everyone is protected and there can be no chance of injustice.

Thereafter, on June 28, 1976, Judge West modified the March 15th order and ordered that the funds be deposited in the registry of the court pending final determination of the matter by the National Labor Relations Board. A total of approximately $1.1 million was deposited in the court registry; the proper distribution of that sum is the issue now.

On March 17, 1978, the NLRB, adopting the ruling of Administrative Law Judge Arthur Leff, decided that

the lighter royalty provision was in violation of Section 8(e) of the National Labor Relations Act, 29 U.S.C. Section 158(e), and ordered that the Unions cease giving it effect.

Following the Board's decision, the NLRB moved to dissolve the injunction and terminate the proceeding in this court. Great Southern Paper Co., International Navigation, Ltd. and Central Gulf Lines, Inc. intervened on the issue of the proper distribution of the registry funds. Panama City Port Authority, the Charging Party in the NLRB proceeding, and its attorneys intervened for attorney's fees and costs incurred. All of the parties have had the opportunity to state their positions with regard to the disbursement of the funds.

All parties agree that the temporary injunction should be vacated and dissolved, since the judgment that the contested contract provision is unlawful is definitive. Not surprisingly, the parties disagree about what should be done with the money in the court registry.

The Unions and NOSSA argue that the funds should be returned to the NOSSA-ILA Pension Fund as called for by the collective bargaining agreement. Such a result would, in the opinion of this Court, defeat the purpose of Judge West's order that the funds be deposited in the court's registry. As indicated above, that order was in response to urgings of NOSSA and the Unions. It was an exercise of the court's equitable powers to protect the interests of all parties, pending the Board's adjudication. And, as can be seen from the quoted portions of the briefs of NOSSA and the Unions, those parties asserted that in the event the Board found the royalty unlawful, the funds should be returned to those who paid them. Equity demands nothing less.

It is contended that the Board had the issue of "reimbursement" before it and decided not to grant such relief. That contention is based on a footnote in Adminis-

trative Law Judge Leff's opinion. Whatever might be the result if the Administrative Law Judge's footnote concerning "reimbursement" were construed in any other way, the court does not construe it as applicable to the funds deposited in the registry of the court and thus gives it no effect with respect to the issues now before the court.

The funds are ordered returned to those who incurred the unlawful expense. The determination of the person who incurred the expense of the unlawful royalty and to what amount is not as simple as might first appear. While the record is not entirely clear with respect to the following, apparently all of the funds at issue were paid into the registry of court by stevedoring companies. In some instances, the stevedore did not add the royalty to its bill to the shipping company for its services but instead elected to absorb it. Those royalties should be returned to the stevedoring companies. In other instances, the stevedore included the unlawful royalty charge in its bill to the shipping company. In some of these instances, the shipping company absorbed the charge and is entitled to the reimbursement; in others it was billed to the shipper either as a specific billing item or as part of the carrier-shipping company's tariff. In this last situation, the shipper is entitled to reimbursement.

The case will be referred to a Magistrate for further proceedings to determine who should receive the funds and in what amount. The issue with respect to attorney fees is deferred; perhaps in the course of the proceedings before the Magistrate it can be resolved amicably.[1] If not, the court will pass upon it after the conclusion of the proceedings before the Magistrate.

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[1] Without deciding that any fees or expenses are due, the court notes that some of the registry funds may remain unclaimed at the conclusion of the proceedings and thus may be available for payment of such fees and expenses if they are determined to be due.

ORDER

For the foregoing reasons, the following is hereby ordered:

(1) The temporary injunction entered herein on March 15, 1976 (as modified June 28, 1976) is vacated and dissolved;

(2) The funds, plus interest earned thereon, deposited in the registry of the court in accordance with the order of June 28, 1976 shall be paid to those persons who incurred the expense of the unlawful royalty.

(3) This matter is referred to a United States Magistrate, who shall serve as a Special Master, as provided by Rule 53 FRCP, to conduct further proceedings with respect to the determination of the persons who incurred the expense of the unlawful royalty, the amount thereof as to each such person, and to file a report and recommendation with respect thereto.

The Magistrate shall fashion an appropriate procedure to carry out this order, including procedures for notice to potential claimants.

(4) A determination by the court with respect to the claim by Panama City Port Authority and its attorneys, Alley and Alley, for attorney's fees is deferred until such time as the proceedings before the Magistrate are concluded.

New Orleans, La., April 5, 1979

/s/ A. G. Duplantier
U.S. District Judge

APPENDIX F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 75-3223

Section "H"

FALLON W. BENTZ, Acting Regional Director of the Fifteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD

versus

GENERAL LONGSHORE WORKERS, ILA LOCAL No. 1418 and GENERAL LONGSHORE WORKERS, ILA LOCAL No. 1419

ORDER

On March 15, 1976, an order, enjoining the New Orleans Steamship Association (hereafter NOSSA) and ILA locals 1418 and 1419 from enforcing the royalty provision which was at issue in this matter, was entered. This order directed the parties to the litigation to meet and prepare "an order providing for a method to keep account of the tonnage of LASH and SEEBEE Barges emanating from the Port of Panama City, which passes through the port of New Orleans from this date, pending final adjudications by the Board with respect to this matter."

Almost simultaneously, the United States District Court for the Southern District of Alabama, Southern Division, Judge W. B. Hand presiding, enjoined the enforcement of a similar royalty provision, pursuant to § 10(1) of the National Labor Relations Act, as amended.[1]

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[1] *Fallon W. Bentz v. International Longshoremen's Association*, Local 1410 (Longshore Division), C.A. No. 75-507-H, (Ala. S.D., 1976).

When faced with the problem which is now before the Court, Judge Hand held:

> "The Court, upon consideration of the pleadings, evidence, argument of counsel and the entire record in the case, as well as having inquired of the parties as to their opposition in the premises, has determined that the most appropriate vehicle to maintain status quo of the questioned funds is to have said funds paid into the Registry of the Court."

Although such an order unquestionably mitigates the injunctive relief afforded petitioner by order dated March 15, 1976, it does indeed appear to be the most equitable means to maintain the status quo pending final determination by the Board. Furthermore, the interest of judicial consistency would be best served by the adoption of a similar order.

Therefore, IT IS HEREBY ORDERED that the funds collected by the respondents be deposited in the registry of the Court pending final determination of this matter by the Board.

New Orleans, Louisiana, this 28th day of June, 1976.

/s/ R. Blake West
United States District Judge

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 75-3223

Section "H"

FALLON W. BENTZ, Acting Regional Director of the Fifteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD

versus

GENERAL LONGSHORE WORKERS, ILA LOCAL No. 1418 and GENERAL LONGSHORE WORKERS, ILA LOCAL No. 1419

MEMORANDUM AND ORDER

The Court has jurisdiction over this matter pursuant to Section 10(1) of Labor Management Relations Act, 1947, as amended by Public Law 86-257, 1959.[1]

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[1] "(1) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding

The only question before the Court is whether injunctive relief should be granted pending final adjudication of the provision of the agreement which is in controversy by the Board.

The test the Court must use in determining this question is whether petitioner has established the likelihood of a violation or a prima facie case of a violation. *Douds v. Milk Drivers*, 248 F.2d 534 (C.2, 1957); *Brown v. National Union of Marine Cooks and Stewards*, 104 F.Supp. 685 (N.D.Calif., 1951).

The petitioner need not show that an unfair labor practice has been committed, but need only demonstrate that there is reasonable cause to believe that the elements of an unfair labor practice are present. *Boire v. International Brotherhood of Teamsters*, 479 F.2d 778, (C.5, 1973).

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any other provision of law; *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further*, That such officer or regional attorney shall not apply for any restraining order under section 8(b)(7) if a charge against the employer under section 8(a)(2) has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, that for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organizations a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D)."

I. THE FACTS

The facts are as follows:

On or about October 1, 1974, ILA Locals No. 1418 and 1419 (hereafter Respondents) entered into a collective bargaining agreement with the New Orleans Steamship Association (hereafter NOSSA), governing the payment of wages, rates of pay, working conditions, and other related matters in connection with longshore work performed in and around the Port of New Orleans by employees of employer-members of (and/or employers represented by) NOSSA. The agreement contains the following special provision applicable to LASH system ships and SEABEE type ships:

> "(1) Lighter Royalty
>
> 1. On LASH and/or SEABEE lighters into or from which cargo has been loaded or discharged in United States ports by other than ILA labor and after which said lighters are loaded or discharged to or from the LASH system ship and/or SEABEE type ship by ILA longshore labor within the Port Limits herein defined, the employer shall pay to the Administrator of the NOSSA-ILA Pension, Welfare, Vacation and Holiday Funds the sum of One Dollar ($1.00) per long ton of cargo which was loaded or discharged into or out of said lighters by non-ILA labor, subject to the following conditions:
>
> a. No royalty payments shall be made on any such cargo if it was rehandled by ILA longshore labor at the request of the employer before putting it aboard ship;
>
> b. No royalty payments shall be paid on any lighters that have been loaded with cargo not subject to load or count, such as dry bulk fertilizers, grain, bulk lube oil, bulk chemicals, et cetera.

Any such royalty monies actually paid to the Administrator of said Funds on or after the effective date of this contract (whether or not previously accrued) shall be divided as provided in accord with the Article hereof entitled "Royalties".

2. For each dollar paid by the employer to the NOSSA-ILA Pension Fund in accord with Section (1) above, the employer shall pay an equal amount to the Association for deposit in a "Guaranteed Annual Income" Escrow Account which shall be used by the Association in accord with and solely for the purposes set out in Section 12 of Article XXVIII-Guaranteed Annual Income."

From October 1, 1974, and continuing to date, Respondents and NOSSA, its employer-members and employers represented by NOSSA, have maintained, reaffirmed, given full force and effect to, enforced and/or sought to enforce Article XXVI and Article XXVII, Section (1) (hereafter lighter royalty) of their collective bargaining agreement. By virtue of the lighter royalty clause in the ILA-NOSSA collective-bargaining agreement all cargo loaded into LASH and/or SEABEE lighters (barges) in the Port of Panama City (a non-ILA labor port) and thereafter loaded (in lighter form) upon system ships in the Port of New Orleans has, at all times since on or about October 1, 1974, and continuing to date, been assessed (taxed) a royalty payment (penalty) amounting to $2.00 per long ton. During the period since October 1, 1974, a total in excess of 100,000 long tons of cargo emanating from the Panama City Port has been subjected to financial penalties totaling in excess of $200,000. Of the traditional users of the Panama City Port whose cargo has been subjected to the lighter royalty by virtue of the "non-ILA" status of longshoremen employed by the Panama City stevedores, Great Southern Paper Company of Cedar Springs, Georgia has accounted for approximately 67,275 long tons of lighter cargo amounting to approximately $134,550.

II. THE LAW

Section 8(e) of the National Labor Relations Act was adopted in order to prohibit labor organizations from accomplishment by agreement what they could not otherwise accomplish.[2]

Therefore, if the lighter royalty provisions constitute a prohibited secondary boycott, they are *per se* unlawful.[3]

III. CONCLUSION

After a careful review of the entire record, the Court finds that there is no doubt but that the petitioner has

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[2] *Local 1976, United Brotherhood of Carpenters v. Labor Board (Sand Door)*, 357 U.S. 93, 78 S.Ct. 1011, 2 L.Ed.2d 1186. (1958).

[3] As stated by the Board in *Dan McKinney Co.*, 137 NLRB 649, at 655,

> ". . . It is clear from the legislative history that, to close these loopholes, Congress, in banning the signing of all such agreements, intended also to render unlawful a secondary boycott resulting from the employer's voluntary compliance with an existing hot-cargo clause and to render the employer's consent ineffective for all purposes. The congressional intent to interdict an actual cessation of business pursuant to an illegal clause is further obvious from a literal reading of Section 8(e) itself, which prohibits such agreement 'whereby such employer ceases or refrains . . . from . . . doing business with any other person . . .' Also, it is clear that Congress was of the opinion that the mere existence of such provisions has coercive effect upon an employer and, in providing that hot cargo clauses shall be 'void and unenforcible', was legislating to eradicate any form, existence, or enforcement of such contracts as against public policy. Accordingly, to accomplish its purpose, Congress broadened the Board's power to include the authority which it did not previously have according to the Supreme Court's decision in *Sand Door*, and commissioned the Board, where proper charges are filed, to police collective-bargaining agreements insofar as hot cargo clauses are concerned and to make findings of unfair labor practices where the facts reveal that any such agreement has been initiated or there has been any enforcement of such a clause.

made a prima facie showing of a violation of the National Labor Relations Act.

As further discussed below the Respondents and NOSSA were unable to defend the lighter royalty on either work preservation or union standards consideration:

A. *Work preservation*

The respondents and NOSSA argue that the lighter royalty serves to preserve work which has traditionally been done by ILA Locals 1418 and 1419, in that, had the barges not been "stuffed" in Panama City, the cargo would have been loaded break bulk in New Orleans, or "stuffed" in other ILA ports.[4]

Such a contention is without support, when one considers the fact that the work being performed by the ALA members is without the geographical work jurisdiction of the Respondents' principal work unit (the Port of New Orleans).

Furthermore, it is clear that the Port of Panama City has historically used ALA labor to load their products into the holds of both ocean-going vessels and lighters.[5] Obviously, therefore, ILA Locals 1418 and 1419 have not traditionally done the same work.

B. *Union Standards*

A comparison of Respondents' collective bargaining agreement[6] with that of Panama City[7] reveals that the wages during the same period of time are identical.

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[4] Testimony of Mr. Alfred Chittenden, President of ILA Local 1418.

[5] See Petitioner's Exhibits 6, 9, and 10.

[6] See Petiitoner's Exhibit 2, Appendix A.

[7] Petitioner's Exhibit 3—Rule No. 40.

In fact, the ALA contract requires increases in wages and fringe benefits contributions equal to those in other Gulf of Mexico ports (including the port of New Orleans).

Furthermore, as there is no evidence that the Respondents knew or made any effort to discover whether the wages or fringe benefits paid longshoremen in Panama City were comparable to the standard in the New Orleans area, the Panama City port area is without the jurisdiction of ILA Locals 1418 and 1419.

Regardless of the fact that the port of Panama City enjoys a competitive advantage over ILA ports because of favorable inland rail rates, or the fact that the lighter royalty may be absorbed by the members of NOSSA, or passed on to the shippers and users of the Panama City port, the fact remains that the lighter royalty appears to have a disruptive effect upon the business relationship between a neutral employer (Great Southern Paper Company) and the primary employer (The Panama City Port Authority). Such a disruptive effect has been held sufficient to meet the "cease doing business" requirements of Section 8(b)(4)(A) and (B) and 8(e) of the Act.[8] That is to say, if Great Southern Paper Company shipped from an ILA port, instead of the Panama City port, the cargo which passed through the Port of New Orleans would not be subject to the lighter royalty. Obviously, the imposition of such a lighter royalty unfairly handicaps the Port of Panama City.

IT IS THEREFORE ORDERED that the defendants, General Longshore Workers, ILA, Local No. 1418 and Local No. 1419, be, and the same are hereby, enjoined from enforcing Articles XXVI and XXVII of the collective bargaining agreement existing between the defendants and the New Orleans Steamship Association.

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[8] N.L.R.B. v. Local 825, Operating Engineers (Burns and Roe, Inc.), 76 L.R.R.M. 2129.

This order effects, however, only LASH and SEABEE barges emanating from the port of Panama City, Florida, which pass through the port of New Orleans,

IT IS FURTHER ORDERED that the defendants, the intervenor, and the petitioner submit to the Court an order providing a method to keep account of the tonnage of LASH and SEEBEE barge traffic emanating from the port of Panama City which passes through the port of New Orleans, from this date, pending final adjudication by the Board with respect to this matter.

New Orleans, Louisiana, this 15th day of March, 1976.

/s/ R. Blake West
United States District Judge

APPENDIX H

Section 10(c) of the Labor Management Relations Act, 1947, 29 U.S.C. § 160(c) (in pertinent part):

> . . . If upon a preponderance of the testimony taken the Board shall be of the opinion that any persons named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without backpay, as will effectuate the policies of this subchapter . . .

APPENDIX I

Section 10(e) of the Labor Management Relations Act, 1947, 29 U.S.C. § 160(e) (in pertinent part):

> The Board shall have power to petition any Court of Appeals of the United States . . . for the enforcement of [its] order and for appropriate temporary relief or restraining order . . . Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the questions determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or part the order of the Board.